

CHAPTER 34 CIVIL PENALTIES

875—34.1(91A) Civil penalties for Iowa Code chapter 91A violations. The commissioner may, upon report of an affected employee or based on other credible information, seek to recover civil money penalties for violation(s) of Iowa Code chapter 91A.

875—34.2(91A) Investigation.

34.2(1) Prior to initiating a contested case proceeding, the commissioner shall, in writing, request written information from the complaining employee(s). This request for written information may be omitted for good cause, including urgent circumstances or the possession of sufficient reliable evidence from another source(s).

34.2(2) Prior to initiating a contested case proceeding, the commissioner shall, in writing, inform the employer of the nature of the alleged violation(s) and request the employer to provide, within 14 days, a response with relevant information, including information necessary for the commissioner to assess penalties. This request for written information may be omitted for good cause, including urgent circumstances or the possession of sufficient reliable evidence from another source(s).

34.2(3) The commissioner may secure evidence or witnesses by administrative subpoena.

34.2(4) The commissioner may, in response to a written complaint, request a warrant to enter a place of employment to inspect records, ask questions, and investigate in relation to possible violations of Iowa Code chapter 91A.

875—34.3(91A) Calculation of penalty.

34.3(1) The commissioner shall assess the penalty with due consideration for the size of the employer's business, the gravity of the violation(s), the good faith of the employer, and the history of previous violations by granting appropriate penalty reductions.

34.3(2) The gross penalty for each distinguishable violation shall be \$100. The following are examples of distinguishable violations:

a. If the act or omission occurs during five consecutive pay periods affecting a single employee, there are 5 distinguishable violations.

b. If the act or omission occurs during a single pay period affecting 50 employees, there are 50 distinguishable violations.

34.3(3) The size of the business shall be considered as follows:

Number of Employees	Penalty Reduction
1-25	25%
26-100	15%
101-250	5%
251+	0%

34.3(4) Gravity shall be considered by giving a 20 percent penalty reduction for a low-gravity violation or a 10 percent reduction for a medium-gravity violation. High-gravity violations shall receive no gravity reduction. The gravity of a violation shall be based primarily on its actual or potential harm to employees. Following are examples of gravity determinations:

a. A low-gravity violation includes any merely technical violation of Iowa Code chapter 91A that does not substantially prejudice any employee.

b. A high-gravity violation includes any violation causing financial injury to an employee.

34.3(5) Good faith shall be considered by giving a 15 percent penalty reduction when there is sufficient evidence that the employer made earnest attempts to be well-informed about and in compliance with Iowa Code chapter 91A. A good-faith reduction shall not be given if the employer committed a violation(s) after having received a complaint(s) or warning(s) about a practice clearly in violation of Iowa Code chapter 91A.

34.3(6) History shall be considered by giving a 10 percent penalty reduction if the violation(s) was isolated. Consideration shall be given to prior civil penalty complaints and may include prior wage claims. A history reduction shall not be given if the violation(s) for which the penalty is being calculated occurred over an extended period of time.

34.3(7) If the employer does not, upon request of the commissioner, provide information relevant to the penalty assessment, the commissioner may deny any penalty reduction for which the employer does not provide responsive information.

875—34.4(91A) Settlement opportunity. Prior to initiating a contested case proceeding, the commissioner shall normally request, in writing, that the employer enter into settlement negotiations. This request may be omitted for good cause, including urgent circumstances or reasonable belief that the employer will not comply with the relevant section(s) of Iowa Code chapter 91A as part of a settlement. The commissioner may, in consideration of the overall nature of the violations, the promptness of the employer's remedial action, and administrative efficiency, accept less than the full penalty from the employer at any time as a settlement.

875—34.5(91A) Notice of penalty assessment; contested case proceedings.

34.5(1) To initiate an Iowa Code chapter 17A contested case proceeding, the commissioner shall serve a notice of penalty assessment in a manner consistent with service of original notice under the Iowa Rules of Civil Procedure. Such notice shall include the following:

- a. A statement that the notice concerns a civil penalty assessment for violation of wage laws.
- b. A statement that, if a hearing is requested by the employer, the commissioner shall determine, after the hearing is held pursuant to Iowa Code section 91A.12, subsections 2 and 3, whether the penalty assessment shall be upheld.
- c. References to this chapter, Iowa Code section 91A.12, and any sections of Iowa Code chapter 91A that are alleged to have been violated.
- d. The type of violation(s).
- e. The number of violations.
- f. The amount of the penalty.
- g. A demand that the employer comply with the notice and record-keeping requirements of Iowa Code section 91A.6(1).
- h. A statement that the employer has the right to request a hearing within 30 days.

34.5(2) Employer nonresponse. If the employer does not respond to the notice of penalty assessment within 30 days of being served, the commissioner shall assess the full proposed penalty, and such assessment shall be final.

34.5(3) Employer request for hearing. The employer may request a hearing within 30 days of being served by mailing such request to the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. Such request shall include the address to which notice of hearing should be mailed. Upon such request, notice of the time and place of hearing shall be mailed to the employer and a hearing pursuant to Iowa Code chapter 17A shall be conducted before an administrative law judge.

34.5(4) Failure to request judicial review. If, after hearing, the employer does not request judicial review of an adverse decision within 30 days, the ruling is final.

875—34.6(91A) Judicial review.

34.6(1) *Employer petition for Iowa Code chapter 17A judicial review.* The employer may request judicial review of an adverse ruling within 30 days. Such petition for review shall name the agency as respondent and shall contain a concise statement of the following:

- a.* The nature of the agency action for which review is requested.
- b.* The action for which review is requested.
- c.* The facts on which venue is based.
- d.* The grounds for the relief sought.
- e.* The relief sought.

34.6(2) *Jurisdiction.* Judicial review shall be in the district court of a county in which at least one violation occurred.

34.6(3) *Transmittal of record.* Within 30 days of the petition for judicial review, or longer as allowed by the court, the commissioner shall transmit the record of the case to the reviewing court.

34.6(4) *District court remedies.* The district court may require the employer to deposit the amount of the assessed penalty with the clerk of court pending the outcome of the judicial review, may uphold the penalty, and may order that the employer comply with the notice and record-keeping requirements of Iowa Code section 91A.6(1).

These rules are intended to implement Iowa Code chapters 91A and 17A.

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